

37 Am. Jur. 2d Fraud and Deceit § 103

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Fraud and Deceit

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IV. False Representations

D. Matters of Law

2. Exceptions to Rule of Nonliability

§ 103. Inequitable conduct by representor; special relationship between parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#) 10

A.L.R. Library

[False representations as to income, profits, or productivity of property as fraud, 27 A.L.R.2d 14](#)

[Avoidance of release of claim for personal injuries on ground of misrepresentation as to matters of law by tortfeasor or his representative insurer, 21 A.L.R.2d 272](#)

A representation of domestic law may constitute fraud where it is accompanied by some inequitable conduct on the part of the person making it which induces the other party to rely and act thereon.¹ Much depends upon whether the parties deal on equal terms.² Thus, relief may be granted because of such a misrepresentation where there is a relation of trust and confidence between the parties³ or where the speaker has, or professes to have, superior knowledge of the law.⁴ Hence, the misrepresentation is actionable where one who personally knows the law deceives another by misrepresenting the law⁵ or, knowing such other to be ignorant of it, takes advantage through such ignorance;⁶ or where the person to whom the representations are made relies upon the supposed superior knowledge and experience of the other party and on the statement that it is unnecessary or inadvisable to consult a lawyer;⁷ or where the representor is a long-time resident of the state and is presumed to know its laws and knows that the representee is new in the state.⁸ As one court has summarized it, the "relationship exception" to the general rule that statements of a legal opinion are not actionable in fraud applies if: (1) the parties are in a fiduciary relationship; (2) the party making the statement is a lawyer and the circumstances require him or her to divulge all the information which he or she

possessed to the plaintiff; or (3) the party making the statement is a lawyer and knew that the plaintiff was relying upon him or her as one learned in the law.⁹ As formulated by another court, the rule is that statements which might ordinarily be classified as nonactionable legal opinions are actionable as a fraud claim where: (1) a party with superior knowledge takes advantage of another's ignorance of the law to deceive him or her by studied concealment or misrepresentation, (2) there is a fiduciary relationship between the parties, and (3) misrepresentations involving a point of law are intended to be misrepresentations of fact and are understood as such.¹⁰ It has also been said that a false opinion of the law, if represented as a sincere opinion, may, as any other opinion, give rise to a fraud claim if it is reasonably relied upon by the other party.¹¹

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Footnotes

1 Cucchiaro v. Cucchiaro, 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939); Rice v. Press, 117 Vt. 442, 94 A.2d 397 (1953).

2 State v. Edwards, 178 Minn. 446, 227 N.W. 495, 65 A.L.R. 1253 (1929); Hartley Realty Co. v. Casady, 332 S.W.2d 291 (Mo. Ct. App. 1960); Rice v. Press, 117 Vt. 442, 94 A.2d 397 (1953).

3 Bowman v. City of Indianapolis, 133 F.3d 513 (7th Cir. 1998) (applying Indiana Law); Loringer v. Kaplan, 179 Neb. 215, 137 N.W.2d 716 (1965); In re Levy's Estate, 19 A.D.2d 413, 244 N.Y.S.2d 22 (1st Dep't 1963).

4 Bowman v. City of Indianapolis, 133 F.3d 513 (7th Cir. 1998) (applying Indiana law); Sawyer v. Pierce, 580 S.W.2d 117 (Tex. Civ. App. Corpus Christi 1979), writ refused n.r.e., (July 18, 1979); Rice v. Press, 117 Vt. 442, 94 A.2d 397 (1953).

5 A misrepresentation of the law may be actionable as fraud where it is made by an attorney who thereby induces reliance. *Bowman v. City of Indianapolis*, 133 F.3d 513 (7th Cir. 1998) (applying Indiana law).

6 Moody v. Stem, 214 S.C. 45, 51 S.E.2d 163 (1948); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939); Madison Trust Co. v. Helleckson, 216 Wis. 443, 257 N.W. 691, 96 A.L.R. 992 (1934).

7 Penn Mut. Life Ins. Co. v. Nunnery, 176 Miss. 197, 167 So. 416 (1936); Hartley Realty Co. v. Casady, 332 S.W.2d 291 (Mo. Ct. App. 1960); Moody v. Stem, 214 S.C. 45, 51 S.E.2d 163 (1948).

8 Fawcett v. Sun Life Assur. Co. of Canada, 135 F.2d 544, 153 A.L.R. 533 (C.C.A. 10th Cir. 1943); Emerson-Brantingham Implement Co. v. Anderson, 58 Mont. 617, 194 P. 160 (1920); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).

9 Graves v. Cupic, 75 Idaho 451, 272 P.2d 1020 (1954) (overruled on other grounds by, *Benz v. D.L. Evans Bank*, 152 Idaho 215, 268 P.3d 1167 (2012)) (license requirements of business being sold).

10 Brodeur v. American Home Assur. Co., 169 P.3d 139 (Colo. 2007).

11 BP America Production Co. v. Marshall, 288 S.W.3d 430 (Tex. App. San Antonio 2008), review granted, (Oct. 1, 2010) and judgment rev'd on other grounds, 342 S.W.3d 59 (Tex. 2011).

11 AIU Ins. Co. v. Deajess Medical Imaging, P.C., 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).